

Committee on Judicial Ethics
Teleconference
Thursday, April 30, 2009

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Linda K. Lager, Vice Chair, Judge Robert J. Devlin, Jr. and Associate Professor Jeffrey A. Meyer.
Staff present: Viviana L. Livesay, Esq., Assistant Secretary.

MINUTES

- I. With a quorum present, Justice Schaller called the meeting to order at 9:35 a.m. Though publicly noticed, no members of the public attended.
- II. The Committee approved the draft Minutes of the March 20, 2009 meeting.
- III. The Committee considered Judicial Ethics Informal Opinion 2009-14 concerning whether a Judicial Official may accept, on behalf of the entire Judicial Branch, an award for excellence in mediation in recognition of the Judicial Branch's Housing Mediation Program. The award is to be presented at a fund-raising reception by a nonprofit organization. This Committee has previously concluded that a Judicial Official may not accept an award as a guest of honor at a mediation fund-raising event (JE 2009-11). Taking into account our opinion in JE 2009-11, the Committee found no distinction arising from the facts that the recipient of the award is the Judicial Branch as an institution and that the Judicial Official would be accepting the award on its behalf as an individual. Notwithstanding those circumstances, the Judicial Official would still be appearing as the featured guest of honor at the fund-raising event. The Committee also noted that the organization's publicity indicated that it would also "recognize...[unnamed] representatives from the Judicial Branch." Based upon the facts presented, the Committee unanimously determined that, although it is permissible for the Judicial Branch to receive an award, it is impermissible under Canon 5(b) for the Judicial Official to accept an award even though the appearance would be in a representative capacity. The Committee cautioned that a Judicial Official should not participate in any fund-raising event in which the Judicial Official could be perceived as being a featured guest or as promoting the fund-raising activity, even if he/she is not a direct award recipient or guest speaker. The Committee noted that, although Judicial Officials may properly accept awards or honors, individually or in a representative capacity, they are not permitted to do so at fund-raising events.
- IV. The Committee considered Judicial Ethics Informal Opinion 2009-15 concerning whether a Judicial Official may provide references consisting essentially of performance evaluations in response to form questionnaires for attorneys seeking contracts with the Commission on Child Protection to provide representation to children and indigent respondents in neglect and termination of parental rights proceedings in juvenile court. Based upon the facts presented, including that the

Commission's reference/evaluation forms were sent to virtually all Judicial Officials assigned to hear juvenile matters, that many juvenile courts in the state only have one judge assigned to each court location, that the applicants appear regularly before the Judicial Officials, and that the process is not likely to remain confidential, the Committee unanimously determined that Judicial Officials who serve as juvenile judges should decline, under Canon 2, to serve as evaluators or references in response to the form request from the Child Protection Attorney because participation in this process would require recusal both presently and in the future with respect to any case handled by the contract attorneys, directly implicating the fifth condition that the Committee specified in earlier opinions. Although the Committee appreciates the need for the Commission on Child Protection to evaluate attorneys on the basis of merit in the process of awarding contracts, compliance with the current process would put Judicial Officials in the untenable position of violating the Code.

V. The meeting adjourned at 9:51 a.m.